

THE KNOTT CASE

MARY HALE FURMAN

Respondent

BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS

EDWARD R. BARR,

GEORGE M. LANNING,

Counsel for Respondent

THE OFFICE OF THE CLERK OF THE SUPREME COURT, WASHINGTON, D. C.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1947

No. 339

THE KNOTT CORPORATION,
Petitioner,

v.

MARY HALE FURMAN,
Respondent

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

OPINIONS BELOW

The District Court did not render an opinion in the case. The opinion of the Circuit Court of Appeals, as yet unpublished, may be found in the record at p. 157.

JURISDICTION

The order denying rehearing in the Circuit Court of Appeals was entered on August 13, 1947. The petition for writ of certiorari was filed on or before September 17, 1947. The jurisdiction of this court is sought to be invoked under section 240 of the Judicial Code, as amended.

STATEMENT

Mrs. Mary Hale Furman, wife of a Naval officer, was sojourning with her husband in the Chamberlin Hotel at Old Point Comfort, Virginia. He was about to sail for the Pacific, and their stay was necessarily to be brief. In March of 1945 the war was at its height with the Japanese.

For generations "The Chamberlin" has been a watering spot of distinction in this part of the country. It is situated within the Fortress Monroe military reservation and the present building was constructed under a long-term lease with the government. When war broke out the leasehold was condemned and the hotel thereupon operated under the jurisdiction of the Navy Department, primarily for the benefit of officers attached to ships temporarily in Hampton Roads (as was the case with Lt. Furman). To manage and operate this 300-room hotel and its sundry concessions, the Navy contracted (R. p. 1) with the petitioner corporation on a fixed fee basis. The company brought down a manager and assistant from New York, employed a staff of 293 people, and its operation soon showed a handsome profit to the government. The Knott Corporation is a specialist in the field and owns and operates a number of other hotels, including one or more for the Navy elsewhere.

The Furmans were aroused in the middle of the night by a sensation of suffocating. Fire of unknown proportions had already filled their room with smoke and choked the passageway outside. Mrs. Furman was pregnant; they tied wet towels around their faces, she standing by the window for air while her husband reconnoitered the corridor. After repeated attempts to feel his way in the darkness, Lt. Furman advised his

wife that the hall was "impassable". It became painfully evident they had been left alone in their wing of the building. Cries and muffled noises in the offing added to their feeling of abandonment. In the appalling necessity of having to do something, the Furmans decided that the best escape was to lower themselves out of the window to a roof three floors, or 32 feet, below.

The rope of bedsheets, anchored to a radiator, tore in two at the middle of the second sheet and sent Mrs. Furman to a shocking, painful fall. The seriousness of her injuries and the adequacy of the \$27,000 verdict are literally the only points in the case over which there was no contest.

It is unnecessary to outline in this brief the slipshod performance in hotel management which brought about all of this unnecessary injury and suffering. Suffice it to say that on each of the six counts of negligence, the record was replete with evidence; so much so, in fact, that we were hopeful the Circuit Court of Appeals would lay down some pronouncement of benefit to the harassed hotel-going public. In its revelation of incompetence and indifference on the part of presumably enlightened hotel management, the case hardly had a counterpart.

ARGUMENT

1. The Alleged Error Presents No Justiciable Controversy Within the Purview of the Appellate Jurisdiction of This Court

The petitioner, it will be observed, is seeking to invoke the jurisdiction of the Supreme Court in an ordinary personal injury action. The only possible contention of which this court could take cognizance concerns its suability in the district court below. The ques-

tion is one of venue, and arises by reason of government ownership of the reservation on which Mrs. Furman was injured.

Mrs. Furman was a citizen of Massachusetts, the defendant (petitioner) was a Delaware corporation, and the suit was brought in the Eastern District of Virginia wherein the corporation did business and gave rise to the cause of action. Process was served not only upon the corporation's resident manager who was found on the premises, but also upon the Secretary of the Commonwealth pursuant to the statute (Virginia Code, 1942, as amended, section 3846a) compelling foreign corporations to submit to suit on causes of action arising out of local business.

The act of cession authorizing the establishment of Fort Monroe reserved to the state among other things the right to "execute any process" therein. The operator of the Chamberlin Hotel was thus subject to suit by Mrs. Furman in the state court and, save for a question of venue, in the district court as well. Cf. *N. & P. Belt Line R.R. Co. v. Parker, et al.* (1929), 152 Va. 484, 147 S. E. 461. It could, unquestionably, have removed this action from a state court. A resident guest injured in the same fire could admittedly have proceeded against the corporation in the very same district court. The petitioner is accordingly in the awkward position of asserting a special immunity, governing only this one particular situation. The contention is made to appear that state law is not applicable in the reservation and hence venue on causes of action arising therein is not waived. The question whether the statute under which process was served herein is efficacious in the reservation, turns upon its proper construction with the 1820 act of cession. That act is a peculiar one, differing

from all others, and in a limited sense only does the point involve the concurrency of Virginia's jurisdiction over Old Point Comfort.

It helps the petitioner's case not one whit to cite a variety of tax cases and make the bold assertion that they are in conflict with the decisions of the district and circuit courts herein. Nor is there any help from—much less conflict in—other decisions which simply protect undomesticated foreign corporations from suit indiscriminately of where causes of action arise. Furthermore, it is entirely consistent in this situation for the Supreme Court of Appeals of Virginia to have declared the self-evident proposition that a soldier transferred to duty at Fort Monroe does not thereby lose his "citizenship" or domicile.

The proper construction of Virginia's act ceding Fort Monroe must admittedly be one of remote interest either to lawyer or layman. Especially so, when one considers that the act of cession has been construed for over fifty years to mean that the general civil laws of the Commonwealth run in Fort Monroe. Ever since our mechanics lien laws were applied to the Chamberlin Hotel in 1893, the case of *Crook, Horner & Co. v. Old Point Comfort Hotel Co.*, 54 Fed. 604, has established as accepted law in this jurisdiction the principle that the Commonwealth of Virginia has retained concurrent civil jurisdiction with the government over Fort Monroe.

The petition, accordingly, presents merely a question of overturning settled, local procedural law—in no wise contradictory of other decisions—on a point of extremely limited value as a precedent in Virginia and virtually none elsewhere.

2. The Question of Venue Was Not Properly Raised

So much emphasis is now placed on the question of venue that it is appropriate to consider how the issue was originally raised.

The complaint (R. p. 93) charged the defendant with operating the Chamberlin Hotel at Old Point, "and otherwise doing, transacting and maintaining a place of business within the State of Virginia and this District". The plea, by motion, studiously avoided a denial (R. p. 13), *merely asserting that the cause of action arose on a federal reservation*. It did not even counter the common sense proposition that the operation of an eight-story hotel could hardly be a self-sufficient and self-sustaining process, carried on only within and upon itself and not extending over into the state proper.

We did not know, and still do not know, whether this defendant is operating another hotel at Virginia Beach or, perhaps, Richmond. But we do observe, from its operating agreement, that all of the corporation's contracts for supplies, all of its purchases of foods, its required traveling back and forth monthly between New York and Old Point (R. p. 5), its checking account in the Bank of Phoebus (outside the Reservation), its operation of such adjuncts as laundries, employment offices, rental agencies and so on, must have carried its affairs in no inconsiderable degree over into the state at large and, for that matter, constantly across state lines.

Bottomed on such a plea, the petitioner corporation is quite unable to avail itself of authorities such as *Ohio River Contract Co. v. Gordon* (1917), 244 U. S. 68; and *Sollit & Sons Const. Co. v. Commonwealth*

(1934), 161 Va. 854, 172 S. E. 290. The question of venue thus reaches the court in a most unsatisfactory and inconclusive manner.

3. The Virginia Statute Authorizing Substituted Service on Foreign Corporations Necessarily Works a Waiver of Federal Venue

Code section 3846a (see Michie's 1946 Cumulative Supplement to the Virginia Code of 1942) provides that a foreign corporation doing business in the state must appoint the Secretary of the Commonwealth "its true and lawful attorney for the purposes hereinafter stated" or, failing to file such power of attorney, will be deemed by doing such business to have made the appointment "for the purposes hereinafter set forth."

As counsel ask, what are those purposes?

The statute, it is well to bear in mind, is limited in operation. It only purports to authorize the Secretary of the Commonwealth to act as process agent for foreign corporations *in suits arising out of their local business*. In other words, assuming a Delaware corporation enters Virginia and does business and files the requisite power of attorney, the Secretary of the Commonwealth is still not its process agent for causes of action arising in Delaware. It cannot be sued, via the Secretary of the Commonwealth, on actions unconnected with its local business. This feature recognizes the established rule protecting corporations such as railroads against the embarrassment of standing suit long distant from the *locus in quo*.

There was no appointment of a statutory process agent, hence no consent to be sued, either express or implied, in *Moss v. Atlantic Coast Line R.R. Co.*, 147 Fed. (2d) 701; *Cummer-Graham Co. v. Straight Side*

Basket Corp., 136 Fed. (2d) 328; and Robinson v. Coos Bay Pulp Corp., 137 Fed. (2d) 512. Even if the Circuit Court of Appeals in those cases had before them automatic appointment statutes such as Virginia's (which, of course, they did not) they still would have been unable to sustain the venue because the causes of action were not local but arose beyond the jurisdiction of each respective court.

Counsel's argument respecting waiver of removal apparently proceeds out of a misapprehension of the decisions such as *Neirbo & Co. et al v. Bethlehem Shipbuilding Corp., Ltd.*, 308 U. S. 165. If a foreign corporation consents to be sued in a state court, they argue, it must be held to have waived the right to remove out of that court. But the difficulty with the theory lies in the fact that consent to be sued in the courts of the state has already been construed to include federal as well as state courts sitting in the locality. See the *Neirbo* case, *supra*, at page 171, which puts the proposition at rest.

The removal privilege is obviously the opposite of a venue privilege. The jurisdictional elements must be present, and no state statute, we should suppose, could force a litigant to release his right to exercise the federal jurisdiction. Such an exaction, if intended, would be clearly void. Removal presupposes federal jurisdiction and acquiescence in its exercise in the court of the remover's choice. It is, of course, exclusively the recourse of a defendant.

All that the *Neirbo* case means is that a foreign corporation which consents under state law to local suit has no more reason to object to such suit in the federal court than it has in the state court. This is hardly inconsistent with the earlier pronouncement of the court

in Louisville etc. R. Co. v. Chatters, 279 U. S. 320, 324 as follows:

"A foreign corporation is amenable to suit to enforce a personal liability if it is doing business within the jurisdiction in such manner and to such extent as to warrant the inference that it is present there (Citing cases). Even when present and amenable to suit it may not, unless it has consented (citing cases), be sued on transitory causes of action arising elsewhere *which are unconnected with any corporate action by it within the jurisdiction* (Citing cases)". (Italics ours).

A practical construction of the statute should prevail: so long as it is possible for a state to compel a foreign corporation to submit to local suit on local business via a local process agent, it must follow from such corporation's right of removal to the federal court that there is no sound reason for exempting it from the jurisdiction of that court at the outset.

Beyond the foregoing there is little to add to the Circuit Court of Appeals' careful analysis of the statute in question. It would seem that if it is lawful for a state to exact the consent of a foreign corporation to be sued, the mechanics employed for judicially recognizing that consent are immaterial for the purposes of this case. The important point is whether the corporation may be deemed to have consented: it may do so by conduct just as well as by express act, and the legislature was entirely competent to choose the method by which its consent or lack of consent is to be measured and determined.

4. Virginia Has Retained Concurrent Civil Jurisdiction Over Fort Monroe

We have already seen that this proposition was judicially enunciated more than fifty years ago in *Crook, Horner & Co. v. Old Point Comfort Hotel Company*, *supra*. That case has been carried forward and quoted as authority in each subsequent edition of the Code of Virginia (see Michie's Code 1942, sec. 17). The corporation at bar must, therefore, be held to an awareness of this construction of the law when it entered the Reservation. Indeed, quite irrespective of the circumscribed nature of the act of cession, when one considers how many state laws have been made to extend into federal reservations by express congressional mandate, it is difficult to conceive how any governmental authority could be considered as having an absolute sovereignty over Fort Monroe.

Recent trends of thought, furthermore, are definitely away from the anachronistic concept of a necessity for exclusive jurisdiction dwelling in the United States. See *James v. Dravo Contracting Co.*, 302 U. S. 134. Modern decisions and statutes even go so far as to condition the acceptance of such jurisdiction on the express assent of a governmental department head. Compare *Silas Mason Co. v. Tax Commr.*, 302 U. S. 186, 197. The *Crook, Horner* case accordingly fits in with the advanced, practical rule of construction now applied by the courts.

The Commonwealth's intentions respecting jurisdiction over federal reservations are clearly revealed in the general statute which was in existence at the time the *Chamberlin Hotel* lease was condemned. Virginia Code, sec. 19:

“* * * For all purposes of taxation and of the jurisdiction of the courts of Virginia over persons, transactions, matters and property on said land, the said lands shall be deemed to be a part of the county or city in which they are located.”

An act (Virginia Laws, 1918, page 568) which ceded exclusive jurisdiction over lands acquired from private owners during the first world war, was repealed in 1936 (Virginia Laws, 1936, page 610), consistently with the state's announced policy of retaining all practical control over government reservations so long as the federal use thereof is not affected.

It may be of interest to note that the implications of the Crook, Horner & Co. case were so much feared in 1922 that the Virginia legislature was petitioned to suspend the reverter clause for the duration of another private lease of the Chamberlin (Virginia Laws, 1922, page 19). That lease having since been condemned out of existence, the suspension is pertinent now only in revealing how both government and state looked upon their respective rights in the Reservation.

Judge Hughes, we think, accurately rationalized the situation in the Crook, Horner case. It is not necessary, however, to go all the way with Judge Hughes in the limited issue of state jurisdiction before us. Our question may be boiled down to the inquiry whether the Virginia statute providing a method for substituted service of process on a foreign corporation extends into an area wherein it is subject to direct process. A corporation in Fort Monroe being amenable to manual service, is there anything in the act of cession to inhibit its amenability to substituted service? We do not think there is, as otherwise the expression “doing business in Virginia” as employed in the statute could not convey

the meaning of doing business everywhere within the reach of Virginia courts.

Far from creating a legal vacuum or void, Judge Hughes thought the act of cession contained (opinion, p. 609) "quite a number of very material limitations of the power of the United States over the land at Old Point Comfort, and provide(s) expressly for the reversion of the land to this Commonwealth, * * *". It was impossible for him to conclude that the parties to the transaction of cession intended to isolate Fortress Monroe. Indeed, it would be a most arbitrary construction of the general language "execute *any* process" to deny that Virginia retained the right to serve all manner of persons with all manner of process in Fort Monroe. Judge Hughes would have been obliged to hold, hence, that a foreign corporation migrating into the area knowingly entangled itself with all the procedural laws respecting its suability in local courts.

If Virginia's civil jurisdiction over Fort Monroe is concurrent to the extent that its mechanics lien laws apply to the construction of the Chamberlin, as they did, we fail to see any menace to the government in treating her process laws as applicable by the same token to the private operator of the Chamberlin. Neither law in any sense regulates or imposes burdens on the Fort, or the government. That, we believe, is the criterion by which all courts are coming to rationalize the maze of decisions dealing with the subject of jurisdiction over federal reservations.

5. By Reserving the Right to Execute Process in Fort Monroe, Virginia Enabled Herself to Legislate Upon the Legal Effect of Service on Persons "Found" There

In approaching this question we at once put aside any notion that process serving in Fort Monroe is a matter of concern to the United States. The government has expressly agreed to permit it to be done therein. Nor can it be claimed that a statutory method of effecting service which does not involve physical entry or act in the reservation interferes with the military uses of the property. This is not a case where local regulations or taxes are sought to be interposed against the peace and dignity of the government; rather is it an eminently practical situation of determining just how far state law controls in a matter of exclusive state concern. And we say exclusive state concern, pointedly: can the United States as owner of Fort Monroe have any conceivable interest in the *locality* of suit against private tort feors therein?

The operation of this hotel obliged the corporation to pay income taxes to the State of Virginia as well as unemployment compensation contributions and benefits (R. p. 97). Title 16, U. S. Code Annotated, sec. 457 provides that in actions for personal injuries sustained on places over which the government's jurisdiction is exclusive, "the rights of the parties shall be governed by the laws of the state within the exterior boundaries of which it may be." State criminal laws now define offenses punishable in the Reservation (18 USCA sec. 468), and state taxes must be paid on sales of motor vehicle fuels therein (4 USCA secs. 12-18). There are almost innumerable other instances in which local laws have a highly practical application on private persons

in governmental reservations. Not the least of which laws, we submit, is that exposing to civil suit persons physically present and doing business in Fort Monroe.

The right to serve process in Fort Monroe means nothing, of course, if nobody is in the reservation. It is only when a potential defendant enters the fort that the right to serve process assumes significance. When a natural person crosses over the line there can hardly be any dispute over his physical presence there: he is his own monument to amenability to process. When an artificial person, however, enters the reservation its presence is to be gauged by the standard of whether it is "doing business" therein.

That standard has come to have a definite meaning in corporation law. Occasional transactions, we know, do not constitute doing business. It is only when a corporation is active enough to warrant the pragmatic inference of its existence in a given locality that the courts have unanimously said it may be "found" there.

Virginia having the right to serve a corporation "found" in Fort Monroe, her courts necessarily have the right to make a judicial determination on the facts touching its existence or non-existence therein. The right of a court to inquire whether its process server has or has not accomplished what his return speaks, can hardly be denied.

By being physically present and "found" in Fort Monroe, a person thus becomes liable to the different methods of service of process enacted by state statute. The statute governing substituted service on an individual (on a man's wife at home, for instance) parallels the legislation which provides for substituted service on corporations (on certain designated agents such as the Secretary of the Commonwealth, for instance). These

statutes ought to be just as efficacious in Fort Monroe as they are in any other locality wherein a county sheriff or city sergeant may step. So long as the requirements are founded on the same act by which a person subjects himself to suit by direct service, namely, the act of being present and "found", there is no legal differentiation between the different mechanical means of summoning persons into court.

The determinative consideration, we submit, is whether this corporation was found within the jurisdiction of a state process server, and this necessarily presupposes the right in the court to decide whether it was legally served. For the heart of the question is not whether the corporation at bar was doing business in Virginia proper, but is whether it migrated into an area in which Virginia may determine that it was subject to suit for what it does or omits to do there. If a corporation has left the domicile of its existence and traveled across state lines into a legal non-entity, that is one thing; on the other hand, if it comes within a state and sets up in business in an area wherein it is as amenable to state process as any other corporation, it is impossible to give effect to one Virginia statute governing service of process without giving effect to the others. That the corporation at bar waived venue depends, not upon whom it injured, but upon whether by doing business it has demonstrated its presence and agreeableness to local process in accordance with local formula.

It must be taken, therefore, that it was within the realm of the Commonwealth's reserved powers to say how and in what manner an *in personam* judgment could be rendered against people in Fort Monroe. The retention of the right to go on the Reservation gave

Virginia jurisdiction over the person of potential defendants found therein. It is perfectly true that those persons are not exposed to state liquor laws, direct taxes or regulatory measures, but for purposes of service of process the right of entry into Fortress Monroe makes it as much a part of Virginia as the balance of the state. To hold otherwise would fasten immunity where none was intended and upset the established practice of every court in the vicinity of Fort Monroe. There is every valid reason to conclude, therefore, that the area was not intended to provide tortfeasors with a hiding place from suit.

6. "Doing Business in Virginia" for Process Purposes Means Doing Business Anywhere That Process May Be Served Within the Geographical Limits of the State

We do not see how it can be sensibly argued that Virginia, by using the unqualified expression "doing business in the state" in a process statute, intended to exclude any part of its geography. Nor can there be read into the expression any indication of Virginia's desire to exempt areas in which it is admitted and established that her process runs.

If the legislature is to be taken as knowingly and intentionally treating federal reservations as no part of the state, how then could Virginia commence to enforce its unemployment compensation laws therein pursuant to mere consent and permission from Congress?

"The terms 'in this state' and 'within this state' as here used obviously mean within the geographical limits of the state. The park is within those limits, and the area comprising the park is not by such terms excluded from the other areas where

the tax is obviously applicable." (Italics added).
(Ranier Nat'l Park Co. v. Martin, 18 F. S. 481,
affd. *per curiam* 302 U. S. 661).

Kiker v. City of Philadelphia (1943), 346 Pa. 624,
31 A. (2d) 289, 297:

"* * * Plaintiff argues that the phrase of the ordinance 'in Philadelphia' excluded League Island because it is not within Philadelphia. This contention is without merit, for obviously that phrase was intended to mean within the geographical limits of that City. As is clearly shown by the Act of February 2, 1854, P. L. 21 (incorporating the City) and the statutes granting consent to its purchase and ceding jurisdiction over League Island, as well as the Federal government's Certificate of Acceptance thereof, the reservation is within the City's territorial boundaries, and the area comprising the island is not, by the phrase 'in Philadelphia' excluded from the rest of the City where the tax is clearly applicable. See Rainier Nat. Park Co. v. Martin, D. C., 18 F. Supp. 481, affirmed 302 U. S. 661, 58 S. Ct. 478, 82 L. Ed 511; Standard Oil Co. v. California, *supra*, 291 U. S. page 243, 54 S. Ct. 381, 78 L. Ed. 775. The averments of plaintiff's bill that League Island is not a part of Philadelphia and that it is wholly outside the political jurisdiction and sovereignty of the Commonwealth of Pennsylvania are not allegations of fact, but rather conclusions of law, which need not be accepted as true by the Court in considering the sufficiency of the bill: Commonwealth ex rel. Davis v. Blume, 307 Pa. 406, 161 A. 551."

It ill behooves a Delaware corporation, migrating into Old Point Comfort, to claim that it was not doing business in Virginia. True, Virginia could not have forbid its entry on a federal reservation, but not even

the government could object, as we have seen, to the condition that it do so on pains of being treated alike with every other foreign company insofar as local suit for local torts is concerned. This corporation's government contract certainly gave it no special virtue over and beyond any other hotel operator in the state with whom it was competing. Clearly, the point of immunity is a technical or paper one, resting exclusively in the mind of counsel. Realistically speaking, anyone who has ever heard of the place will swear that Fortress Monroe is "in Virginia".

7. The Dissenting Opinion Proceeds on Mistaken Concepts of the Case

Judge Groner seemed to think that a question of federal jurisdiction was involved, and speaks in terms of "nullifying the positive jurisdictional limitation of the federal statute". But the issue is manifestly one of venue, as this court as long ago as 1877 made plain (*Ex parte Schollenberger*, 96 U. S. 369, 378):

"* * * The Act of Congress prescribing the place where a person may be sued is not one affecting the general jurisdiction of the courts. It is rather in the nature of a personal exemption in favor of a defendant, and it is one which he may waive. If the citizenship of the parties is sufficient, a defendant may consent to be sued anywhere he pleases, and certainly jurisdiction will not be ousted because he has consented. Here, the defendant companies have provided that they can be found in a district other than in which they reside, if a particular mode of proceeding is adopted, and they have been so found. In our opinion, therefore, the Circuit Court has jurisdiction of the causes, and should proceed to hear and decide them."

Even so, Judge Groner feared the decision might spell out the subjection of federal procedure to the requirements of state law. It is perfectly well settled, however, by the identical authority that local laws may have their effect upon federal venue. Said Mr. Chief Justice Waite, in the same case (p. 377) :

"States cannot by their legislation confer jurisdiction upon the courts of the United States, neither can consent of parties give jurisdiction when the facts do not; but both State legislation and consent of parties may bring about a state of facts which will authorize the courts of the United States to take cognizance of a case. *Ex parte McNeil*, 13 Wall. 236. * * * So, as in this case, if the legislature of a State requires a foreign corporation to consent to be 'found' within its territory (*sic*), for the purpose of the service of process in a suit, as a condition to doing business in the State, and the corporation does so consent, the fact that it is found gives the jurisdiction, notwithstanding the finding was procured by consent. The essential fact is the finding, beyond which the court will not ordinarily look."

The same finding, over the course of years since the Schollenberger decision, has come to be based on principles of waiver, implied, rather than a literal consent to submit to the jurisdiction of a federal court. See the *Nierbo* case, *supra*, at page 175, as well as cases cited in the Circuit Court of Appeals' opinion at R. pp. 161-2.

In evaluating the case Judge Groner did not, we think, carry to its logical and sensible conclusion the salient factor that any person in Fort Monroe—be he an individual or domestic or foreign corporation—is subject to process in all courts, state or federal.

Ex parte Schollenberger, supra, p. 377:

"As the company, if sued in a State court, could remove the cause to the Circuit Court, and thus compel a citizen of the State to submit to that jurisdiction, we see no reason why the citizen may not, if he desires it, bring the company into the same jurisdiction at the outset. While the Circuit Court may not be technically a court of the Commonwealth, it is a court within it; and that, as we think, is all the legislature intended to provide for."

All of the reasons for presuming a waiver thus exist in the case at bar.

To Judge Groner, however, it seemed inconsistent that a state statute should have any effect whatsoever in an area over which the government had "exclusive" jurisdiction.

We have already adverted to the innumerable ways in which state laws actually touched on this corporation's operation of the Chamberlin. It seems ironical, therefore, to describe the government's jurisdiction over Old Point as "exclusive". In limited situations it still could be so classified—where state law might interfere with federal use—but when one reaches down into the bottom drawer of process serving, no rhyme or reason can be perceived to make the government's legislative authority exclusive. Rather does every practical consideration exist in favor of allowing the act of cession to mean what it says and provide a concurrent jurisdiction for process serving purposes.

The dissenting opinion, therefore, cannot but fallaciously import (1) a question of jurisdiction into the case, (2) qualms over the subjugation of federal procedure to state law, and (3) an exclusive right or juris-

diction vested in the United States to serve process in Fort Monroe.

CONCLUSION

We would submit, therefore, that there is the highest authority—and sound, practical reason—for the contrary of every proposition advanced in the petition for certiorari and brief.

Justice has been eminently satisfied in this case, and it should not be disturbed.

Respectfully,

EDWARD R. BAIRD,

GEORGE M. LANNING,

Counsel for Respondent